

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 18 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re)
)
CHAMELEON RADIO CORPORATION) MM Docket No. 96-173
)
Order to Show Cause Why the License)
of Station KFCC(AM), Bay City,)
Texas, Should Not Be Revoked)
)
Request for Extension of Special)
Temporary Authority)
)
Request for Extraordinary Relief)

To: The Commission

**REPLY TO OPPOSITION TO
PETITION FOR RECONSIDERATION**

I. SUMMARY

1. Chameleon Radio Corporation ("Chameleon") and Bernard Smoots ("Smoots"), through counsel and pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, hereby reply to the Mass Media Bureau's ("Bureau") Opposition to Chameleon and Smoots' Petition for Reconsideration of the Commission's Decision revoking Chameleon's license for radio station KFCC(AM), Bay City, Texas.¹

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1. See Mass Media Bureau's Opposition to Petition for Reconsideration, MM Docket 96-173, dated June 1, 1998 (hereinafter "Opposition") See also, Motion of Chameleon Radio (continued...)

2. The Bureau alleges that Chameleon and Smoots improperly filed a Petition for Reconsideration when they should have filed a Petition for Extraordinary Relief.² The Bureau is mistaken; the Petition for Reconsideration was properly filed. Section 1.106(c)(1) of the Commission's Rules allows the Commission to grant a Petition for Reconsideration where the Petition "relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters."³

3. The existence of an interested, qualified purchaser, and a realization that an assignment of license may be possible, are circumstances that did not exist at the time Chameleon was last before the FCC. Accordingly, Chameleon and Smoots are relying on facts and circumstances that did not exist at an earlier stage in this proceeding. Thus, Chameleon and Smoots filed their Petition for Reconsideration properly and timely.⁴

4. The Bureau has also suggested, in its Opposition and in a meeting with Chameleon's attorneys, that Chameleon and Smoots should have filed a Petition for Extraordinary Relief in lieu of the Petition for Reconsideration. In fact, Chameleon and Smoots' Petition for Reconsideration included "Petition for Extraordinary Relief" in the caption. Also, as a result of their counsel's meeting with the Bureau, Chameleon and Smoots are now clarifying and modifying their request for extraordinary relief. Specifically, Chameleon and Smoots are no longer requesting distress sale

1. (...continued)
Corporation and Bernard Smoots for Extension of Time, MM Docket 96-173, filed June 11, 1998.

2. Opposition at 2.

3. 47 C.F.R. §§ 1.106(c)(1) & (b)(2) (1996).

4. The Bureau does not challenge the timeliness of the Petition for Reconsideration.

relief, but rather, authorization to assign the license for Chameleon's legitimate and prudent expenses. The instant request for extraordinary relief is therefore not without foundation. Indeed, it is a direct outgrowth of that earlier proposal and was refined following discussions with the Bureau. Thus, the Commission should focus on the substance of the pleading, rather than on the caption, in determining whether a pleading, like this one, has merit.

5. As further demonstrated herein, instead of revoking Chameleon's license and depriving Bay City of its only AM station, the Commission should permit Chameleon to assign its license to Smoots for an amount equal to Chameleon's legitimate and prudent expenses in the station. By assigning the license to Smoots, the Commission will prevent Bay City's only AM station from going dark, while simultaneously promoting diversity of media ownership. Furthermore, Chameleon will still be severely punished because its legitimate and prudent expenses are dramatically less than the station's fair market value.

**II. FAILURE TO GRANT THE PETITION WILL RESULT
IN THE LOSS OF A VALUABLE SERVICE TO BAY CITY.**

6. If the Commission revokes Chameleon's license, it will violate its long standing policy of not removing a broadcast station from a community where the station is one of very few in that community. As explained in *In re Application of WNAR, Inc.*, "any deprivation or degradation of [broadcast service] to any group of people is prima facie not in the public interest and can be justified only by countervailing public interest factors sufficient to offset that deprivation or degradation."⁵ Likewise, in *Golden Broadcasting Systems, Inc.*, the Commission expressly

5. 27 RR 2d 1119, 1124 n. 8 (1973).

recognized that the public interest would be harmed by allowing a station which was one of only two in the community to go dark.⁶

7. The Commission should adhere to the precedent established in *WNAR* and *Golden* and not allow KFCC to go dark. In order to accomplish this goal, the Commission has two options: (1) assign the license to Smoots on a permanent basis; or (2) seek applicants for interim operating authority.⁷ The Commission should choose the first option.

8. If the Commission were to assign the license to Smoots, it would gain a permanent licensee who is committed to providing service to the Bay City community.⁸ As noted in the Petition for Reconsideration, Smoots resides in the Bay City area, so not only is he aware of concerns facing that community, but he also has a vested interest in making sure the station serves that community. Furthermore, Smoots will maintain the station's unique and community supported programming format.

9. In addition to KFCC, two stations, both FM, serve the Bay City community. Both stations offer Country and Western programming. In contrast, KFCC provides programming that is aimed at the community's large minority population, including many programs in and a number

6. 68 FCC 2d 1099, 1109 (1978).

7. In *Golden*, in order to avoid depriving the public of the station's benefits, the Commission issued a separate Public Notice accepting applications for either temporary or permanent authority to operate the station. The Commission's decision in *Golden* took place in 1978, long before Congress directed the Commission to award broadcast licenses through competitive bidding procedures. Accordingly, given the FCC's obligation to award future licenses for permanent broadcast authority through auctions, if the Commission chooses to keep KFCC on the air, and not assign the license to Smoots, the Commission can only seek applicants for temporary authority.

8. See Affidavit of Bernard Smoots, attached as Exhibit 1 hereto.

of programs targeting African Americans.⁹ No other station in the area provides this type of diversity or breadth in programming.

10. The attached letters demonstrate that many members of the Bay City community strongly support KFCC.¹⁰ The Bay City Chamber of Commerce and Agriculture, for example, asserted its intention to use KFCC as a method of reaching the Bay City community.¹¹ Accordingly, rather than allowing this station to go dark, and thereby depriving the community of KFCC's unique and valued programming, the Commission should authorize the assignment of the station's license to Smoots.¹²

11. Granting interim operating authority for KFCC, the second alternative available to the Commission, would not be in the public's best interest. Any interim operator would only be permitted to operate the station for whatever limited amount of time there may be before the Commission auctions the license. The interim operator would, therefore, have no incentive to invest substantial resources or time in the station. This would in turn minimize the quality of service the Bay City community would receive from the station. Furthermore, when the interim operating authority expires, and the Commission auctions the license for KFCC, it is possible that the station

9. See KFCC Programs And Issues List for 1st Quarter 1998; KFCC Program Schedule for June 7, 1998, attached as Exhibit 2 hereto.

10. See Exhibit 3 hereto.

11. See Letter from the Bay City Chamber of Commerce & Agriculture to Mr. Bernard Smoots, dated June 10, 1998, included in Exhibit 3 hereto.

12. Chameleon and Smoots will file an application for assignment and any other documents required by the Commission's rules upon grant of the relief requested herein.

will not be able to conform to the Commission's revised AM technical standards.¹³ As a result, the station would not be permitted to operate, and the Bay City community will have lost its only AM outlet for all times. The Commission can prevent this loss to the community by assigning the license to Smoots.

III. ASSIGNING THE LICENSE TO SMOOTS IS CONSISTENT WITH COMMISSION PRECEDENT.

12. Assigning the license for KFCC to Smoots would also advance the Commission's goal of increasing minority broadcast interests.¹⁴ Each commissioner has recently pledged his and her commitment to the principle of increasing minority ownership of broadcast media. Indeed, it is one of the Chairman's "top priorities." Despite these pronouncements, very few opportunities exist to advance this goal. This is one of those rare opportunities to do so.

13. The Commission has previously authorized an assignment of license where the assignor's character qualifications were in question and neither the assignor nor assignee profited from the assignment.¹⁵ These cases typically involved licensees who suffered from some form of illness that adversely affected their character qualifications. Despite serious doubts about the licensees' character qualifications, the Commission in these cases found that assignment of the license was warranted in order to maintain the stations' service to the community. Here, the interest in maintaining the service offered by KFCC, and in promoting minority broadcast interests, should

13. See Engineering Statement, attached as Exhibit 4 hereto.

14. See, e.g., *Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting*, 92 FCC 2d 849 (1982); *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 n. 20 (1978).

15. See, e.g., *Cathryn C. Murphy*, 42 FCC 2d 346 (1973); *Tinker, Inc.*, 9 RR 2d 1239 (1967).

receive the same consideration. Consistent with Commission precedent, Chameleon (the alleged wrongdoer) will not profit from the assignment of KFCC if Chameleon assigns the station for an amount only equal to its legitimate and prudent expenses. These expenses total \$70,569.14, which is only equal to approximately 30% of the station's fair market value.¹⁶ Thus, the proposed assignment is appropriate.

14. By assigning the station to Smoots, the Commission can affirmatively advance the needs of minority broadcasters and their listeners while severely punishing Chameleon. In contrast, if the license for the station were auctioned, there is very little chance that Smoots, or any other minority broadcaster, would be able to raise enough capital to be able to compete for the license.

A recent study discovered that:

[t]he market share of the average superduopoly station is more than two and one-half that of non-duopoly stations. Average revenues for superduopolies was [sic] almost double that of single-station owners. ... These developments have caused station prices to increase beyond the reach of most small and Black entrepreneurs. Therefore, the latter have not been in a position to acquire properties and enjoy the benefits that accompany multiple ownership.¹⁷

This lack of minority participation harms those members of the public who regularly obtain information about their community from minority-owned and operated stations.¹⁸ This does not have to happen with KFCC.

16. The station's fair market value is estimated to be \$210,000. See Letter from John W. Saunders to Mr. Don Werlinger, President, Chameleon Radio Corporation, dated June 9, 1998, attached as Exhibit 5 hereto.

17. Kofi Ori, *et al.*, BLACKOUT? MEDIA OWNERSHIP CONCENTRATION AND THE FUTURE OF BLACK RADIO, at 36 (Medgar Evers College Press, pub. 1997).

18. *Id.* at 66 ("We project that for Black elected officials, community leaders and advocates, it will be increasingly difficult to access the air to disseminate critical information to the Black community.").

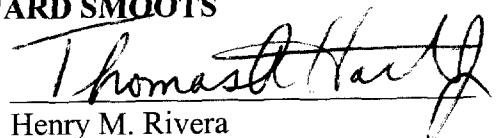
15. The Bay City community has a diverse citizenry and deserves a diverse media. The population in Matagorda County, which includes Bay City, is comprised of 14% Blacks, 25% Hispanic, 2% other minority, and 59% White.¹⁹ None of the other stations that serve Bay City provide any substantial targeted programming for minorities. If the Commission were to allow KFCC to go dark, the minority population in Bay City would have no other outlet from which to receive information specifically targeted to their interests.

16. In light of the foregoing, the Commission should recognize that the public interest, and its own policies, would best be served by assigning the license for KFCC to Smoots. Accordingly, Chameleon and Smoots respectfully request that the Commission deny the Bureau's Opposition and grant the relief requested herein.

Respectfully submitted,

**CHAMELEON RADIO CORP. and
BERNARD SMOOTS**

By:



Henry M. Rivera

Thomas A. Hart, Jr.

Mark N. Lipp

M. Tamber Christian

Their Attorneys

SHOOK, HARDY & BACON, LLP

801 Pennsylvania Ave., NW

Suite 600

Washington, DC 20004

(202) 783-8400

June 18, 1998

19. See Exhibit 6 hereto.

EXHIBIT 1

EXHIBIT 2

KFCC PROGRAMS AND ISSUES LIST

KFCC RADIO 1270 AM
Texas Highway 35 West
Bay City, Texas

The following programming was aired during the period: January, February, and March, 1998.

January

1. Through the program "Focus Radio," KFCC co-sponsored a series of six free prostate cancer screening dates at various locations in Matagorda County. Two half hour interview programs with a representative of the American Cancer Society were aired along with sixty 60-second promos for the screenings. More than one hundred African-American men and a large number of Anglo men participated in the program.

2. Through the program "Radio Jesus," a Spanish language program, KFCC aired a program debating the issue of abortion on demand in the State of Texas. Callers were encouraged to call the program and enter the debate. Several dozen callers participated.

February

1. Through the program "Straight Talk," a program produced to discuss issues of interest to the Pakistani and Indian communities in south Texas, KFCC aired a number of discussions regarding the February, 1998 elections to elect a new board of directors for the Pakistani Association of Greater Houston (PAGH). The PAGH is the largest public service organization for the Pakistani community in the Houston metropolitan area. Several of the candidates for the board of directors appeared on the program between January 19, 1998 and February 8, 1998 answering questions regarding their candidacies and their proposed plans for PAGH.

2. Through the program "Focus Radio," KFCC aired more than one hundred public service promos targeting young African Americans and warning of the health risks of smoking. Information for the flight of promos was provided by the local chapter of the American Cancer Society.

March

1. Through the program "Focus Radio," a program targeted to the African American community, and "Radio Jesus," a Spanish language program targeted at the central and south American Hispanic community, KFCC aired a series of series of promos and one interview program regarding the problems of parents not buckling their children in seat belts. The promos and interview detailed the law regarding seat belt use and gave parents information concerning use of safety seats and belts and where parents who could not afford safety seats could receive assistance in obtaining them.

A handwritten signature, possibly "M. De", is enclosed within an oval shape.

KFCC

Sunday, June 07, 1998

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday					
6:00	Gente Para Jesus	Gente Para Jesus	Gente Para Jesus	Gente Para Jesus	Gente Para Jesus	Gente Para Jesus	Gente Para Jesus					
:30												
7:00												
:30												
8:00												
:30												
9:00								Apna Punjab				
:30												
10:00												
:30												
11:00									Geetmala (pending)			
:30												
12:00		Focus Radio	Focus Radio	Focus Radio	Focus Radio	Focus Radio						
:30												
1:00	Straight Talk											
:30												
2:00												
:30												Sangam Entertainment
3:00	Gente Para Jesus											
:30												
4:00												
:30												
5:00												
:30												
6:00	Focus Radio											Focus Radio
:30												
7:00												
:30												
8:00												
:30												
9:00												
:30												
10:00												
:30												
Other:												

EXHIBIT 3



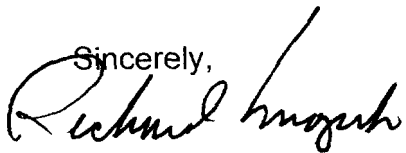
June 10, 1998

Mr. Bernard Smoots
4210 Worrell
Houston, Texas 77045

Dear Mr. Smoots,

The Bay City Chamber of Commerce and Agriculture is pleased to welcome you to the business community. With our diverse community, radio station KFCC 1270 AM will become an important voice not only to the African American segment, but to all of Bay City. The 1270 spot on the AM dial has been a tradition in the Bay City area for many years. We are glad to see you revive and renew this popular spot.

As the voice of the community, the Chamber can utilize your station as another tool in getting our message out. We wish you the very best of luck in this endeavor.

Sincerely,

Richard Knapik, ChECD
President

PORT OF HOUSTON AUTHORITY

EXECUTIVE OFFICES: 111 EAST LOOP NORTH • HOUSTON, TEXAS 77029-4327
MAILING ADDRESS: P.O. BOX 2562 • HOUSTON, TEXAS 77252-2562
TELEPHONE: (713) 670-2400



JOHN Q.A. WEBB, JR., M.D.
Commissioner

June 9, 1998

Mr. Bernard Smoots
4210 Worrell Dr.
Houston, TX 77045

Dear Mr. Smoots,

While conducting some business in the Bay City and Victoria areas, I had an opportunity to listen to KFCC 1270AM. I thoroughly enjoyed listening to a station, which catered to an educated minority-focused listener.

After learning that you were responsible for this fascinating format, I also learned that you were being considered for receiving ownership of license for this station. I wholeheartedly support your success in this process.

The rural broadcast area of the station is often thought to be nothing more than a bed of country music. However, the success of your format has shed new light on the true faces of those listening, and what they want to hear. Continued success on this and future endeavors.

Sincerely,

Dr. John Q. Webb



KASHMERE SENIOR HIGH SCHOOL

and the KASHMERE SCHOOL of MUSIC and FINE ARTS

6900 WILEYVALE ROAD

HOUSTON, TEXAS 77028

(713) 636-6400

DAVID L. ALEXANDER, II
PRINCIPAL

ADMINISTRATIVE STAFF

Assistant Principals	Dr. Dolores Westmoreland David Terrell Mary Williams
Secretary	Sandra Miller
Counselors	Annie Laura Alex Percy Biagas Barbara Cravin Dr. Genevieve Gaynor
Magnet Coordinator	William Vaughan

June 8, 1998

Mr. Bernard Smoots
4210 Worrell
Houston, TX 77045

Mr. Bernard Smoots:

I had the occasion to listen to radio station KFCC, 1270 AM, in Bay City, TX. I was so impressed with the format that I inquired about the ownership of the station. It was revealed to me that you were the programmer.

I commend you for having such an excellent format and the positive image that is portrayed to the community. This gives minorities an opportunity to communicate their views about relevant local, state, and national issues.

I understand that you are pursuing ownership of the license. If I can be of any assistance in the way of providing recommendations on your behalf, please feel free to call on me. I can be reached at 713-636-6400.

Sincerely,

David L. Alexander II, Principal



R. A. "BOB" SANDERS
ASSISTANT VICE PRESIDENT
INTERNATIONAL & INDUSTRIAL RELATIONS
COASTAL STATES MANAGEMENT CORPORATION

Mr. Bernard Smoots
4210 Worrell St.
Houston, Texas 77045

Dear Mr. Smoots:

I am a regular listener of radio station KFCC- 1270 AM. I have always been impressed with the quality of the programming of this station. I was very please to hear that you have made application for licenses for this station.

I am also pleased that you as a minority businessman will be offering radio programming to minority listeners living in the Bay city, Missouri City, Sugarland, and Fort Bend county areas.

I am sure you are aware that Fort Bend County is not only the fastest growing county in this country, but the only Minority-Majority County in the state of Texas (and still growing).

I congratulate you on your foresight and effort. Your timing is good. Since I live in Sugarland, I will continue to be a regular listener of KFCC- 1270 AM.

With Warm Regards,

R.A. "Bob" Sanders

Coastal States Management Corporation

A SUBSIDIARY OF THE COASTAL CORPORATION
COASTAL TOWER • NINE GREENWAY PLAZA • HOUSTON TX 77046-0995 • 713/877-6262 • FAX 713/877-3068

EXHIBIT 4

ENGINEERING STATEMENT

Bob Morrow Engineering Services has been retained by Chameleon Radio Corporation to prepare exhibits indicating overlap which would prohibit the allocation of the frequency 1270 kHz at Bay City, Texas under current rules. Along with this narrative, Exhibit: E-1, E-2, and E-3 are presented.

KFCC is one of numerous stations through the U.S. which both produces and receives overlap which at one time was permitted but which is now prohibited under 47CFR73.37(a) of the Commission's rules. Specifically, KFCC (1270 kHz, 1 kw, U, DA-N) both generates and receives overlap from first adjacent station KWHI, (1280 kHz, 1.0 kw, ND-D), Brenham, Texas. This overlap would prevent any future allocation of the 1270 kHz allocation at Bay City should the current allocation disappear.

Three exhibits are included in support of this conclusion. Inverse distances to contours were determined using Figure: M-3 of the Commission's rules regarding conductivity.

Exhibit: E-1 indicates currently licensed overlap of the 0.250 mV/m contour of KWHI to the 0.50 mV/m contour of KFCC. This "grandfathered" overlap is indicated by a shaded area and consumes approximately 2,560 square kilometers.

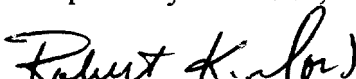
Exhibit: E-2 indicates currently licensed overlap of the 0.0250 mV/m contour of KFCC to the 0.50 mV/m contour of KWHI. This "grandfathered" overlap is indicated by a shaded area and consumes approximately 3,340 square kilometers.

Exhibit: E-3 indicates currently licensed overlap of the 0.50 mV/m contours of both KFCC and KWHI. This "grandfathered" overlap is indicated by a shaded area and consumes approximately 1,980 square kilometers.

The overlap generated and received by these two first adjacent stations clearly would prohibit any new allocation of the frequency 1270 kHz with its current operating parameters at Bay City, Texas should the current allocation be removed. Additionally, given the proximity to Bay City of the 0.250 mV/m contour of KWHI, it would be very difficult, if not impossible, to design a directional daytime antenna system which would meet the Commission's requirements under Section 73.37(a) of the rules.

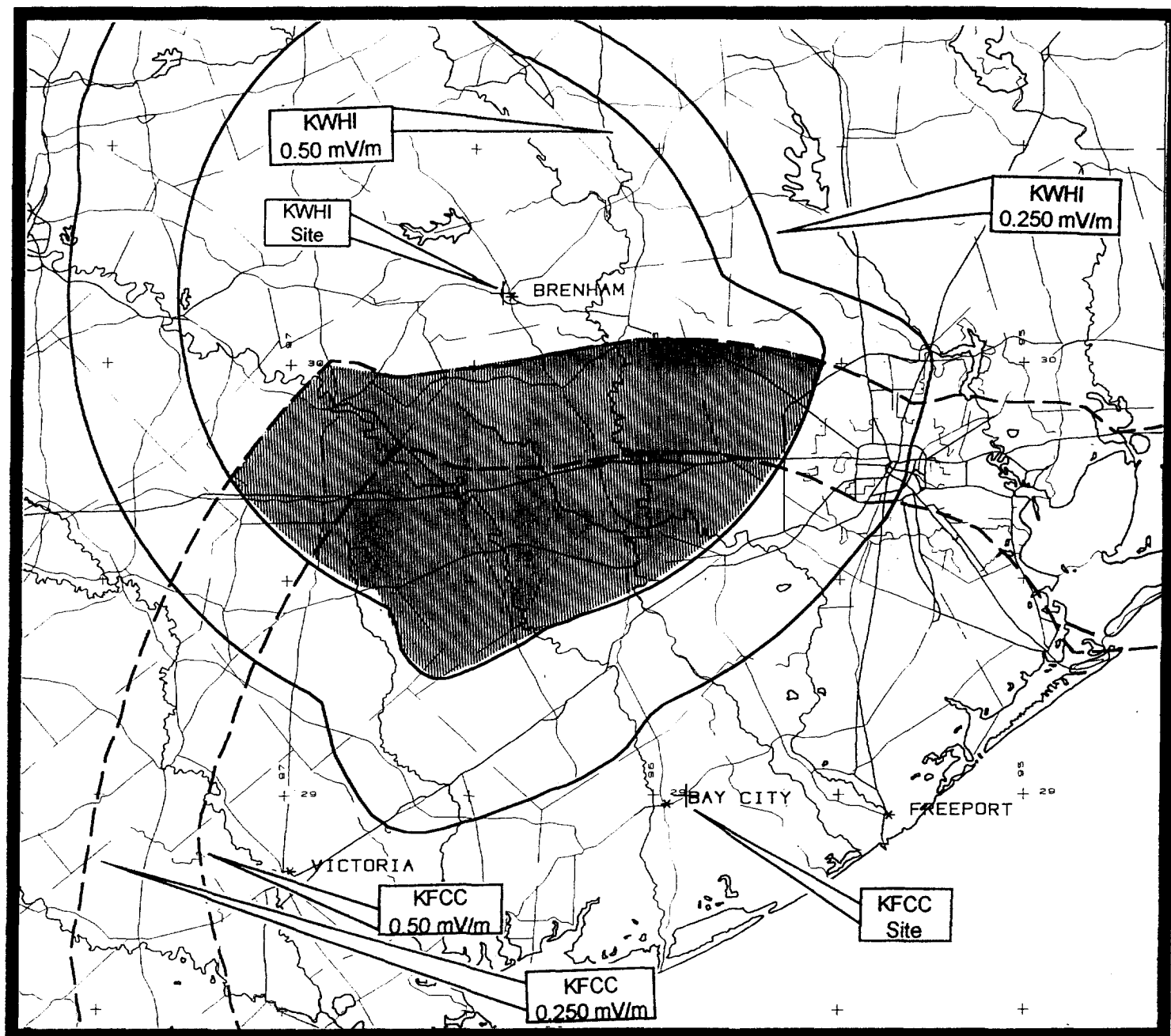
The predicted 0.250 mV/m contour of KWHI lies within 12 km of Bay City. A directional array utilizing a standard pattern would require not less than 10 mV/m of signal toward KWHI, which, utilizing the conductivity of 30 mmHos/m as indicated by Figure M-3, would generate a 0.50 mV/m contour of 16 km from any directional array used by an applicant seeking to allocate 1270 kHz again to Bay City. The resulting 4 km of overlap would not meet the Commission's overlap protection requirements.

Respectfully submitted,


Robert (Bob) Morrow

KFCC vs KWHI Contours

.5 mV/m to .250 Protected Contours



Scale in km
 0 10 20 30 40 50 60 70 80 90

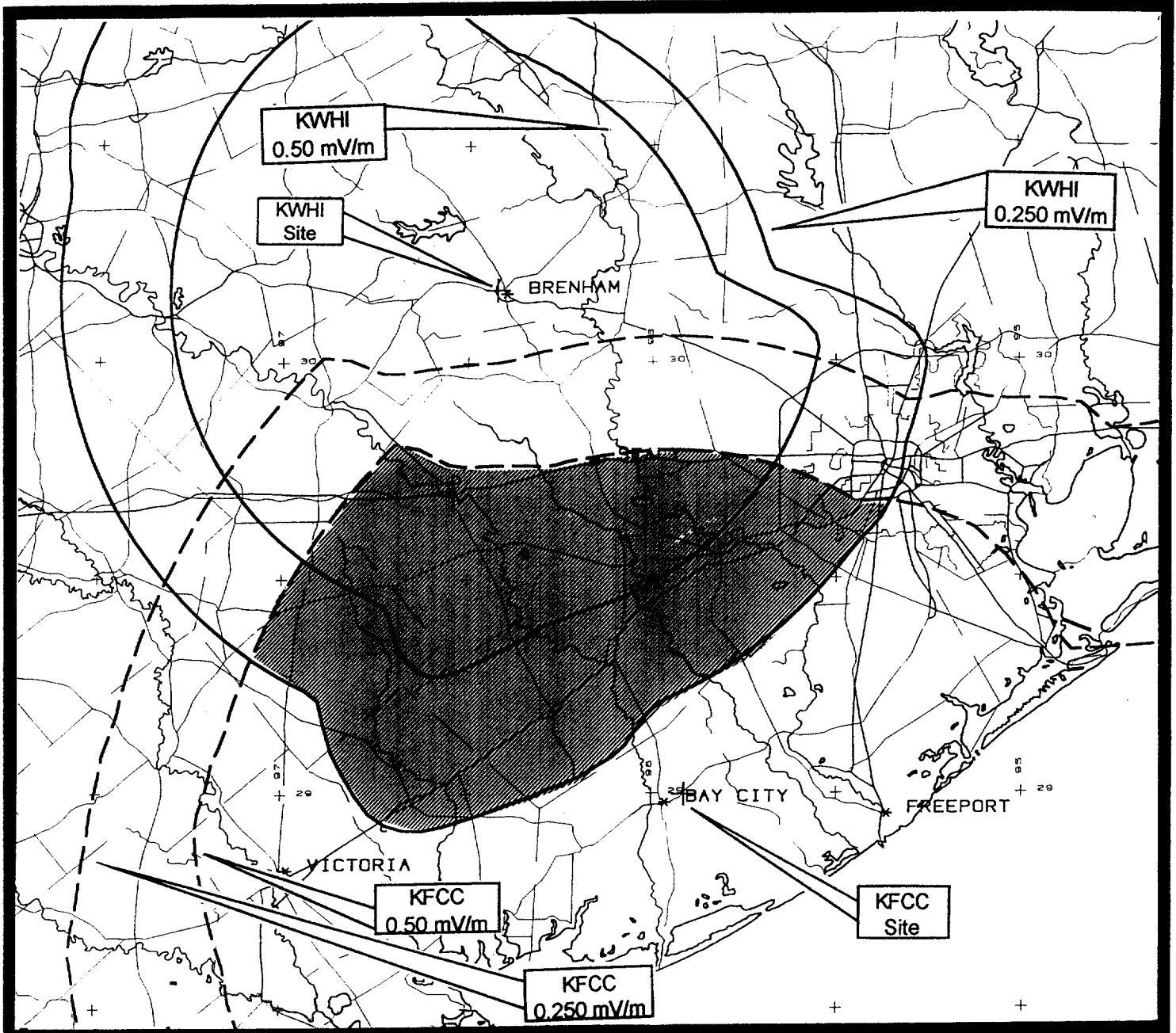
Bob Morrow Engineering Services
 RF Facilities Construction and Maintenance
 5713 First Street
 Katy, Texas 77493
 (281) 391-2114

EXHIBIT: E-2

Map Indicating Grandfathered Contour
 Overlap Between 0.250 mV/m of KFCC
 and 0.50 mV/m of KWHI. Approximate
 overlap is indicated by shaded area
 totaling approximately 3,340 sq. km.

KFCC vs KWHI Contours

.5 mV/m to .250 Protected Contours



Scale in km
0 10 20 30 40 50 60 70 80 90

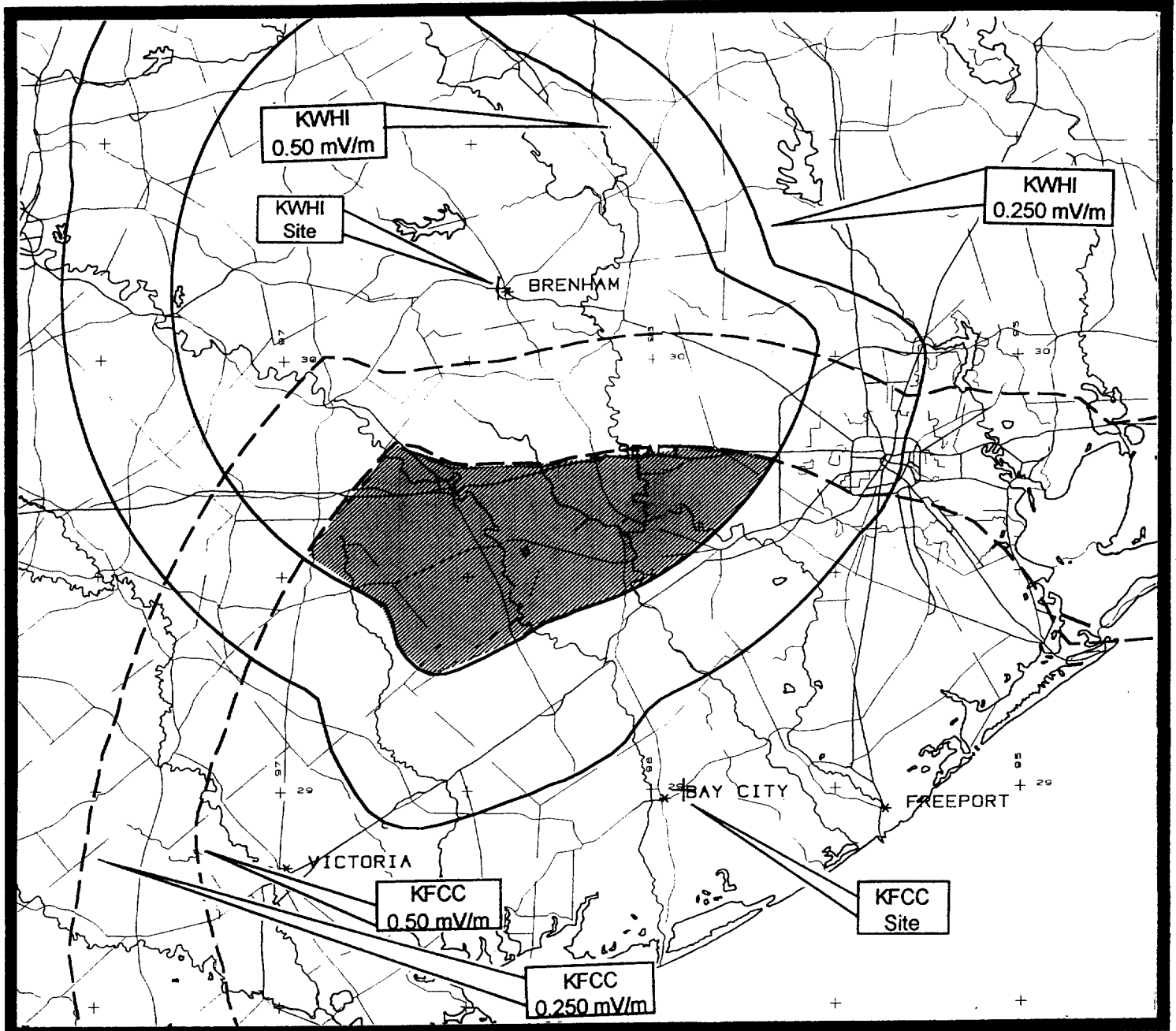
Bob Morrow Engineering Services
RF Facilities Construction and Maintenance
5713 First Street
Katy, Texas 77493
(281) 391-2114

EXHIBIT: E - 1

Map Indicating Grandfathered Contour
Overlap Between 0.250 mV/m of KWHI
and 0.50 mV/m of KFCC. Approximate
overlap is indicated by shaded area
totaling approximately 2,560 sq. km.

KFCC vs KWHI Contours

.5 mV/m to .250 Protected Contours



Scale in km
0 10 20 30 40 50 60 70 80 90

Bob Morrow Engineering Services
RF Facilities Construction and Maintenance
5713 First Street
Katy, Texas 77493
(281) 391-2114

EXHIBIT: E - 3

Map Indicating Grandfathered Contour
Overlap Between 0.50 mV/m of KFCC
and 0.50 mV/m of KWHI. Approximate
overlap is indicated by shaded area
totaling approximately 1,980 sq. km.

EXHIBIT 5

JOHN W. SAUNDERS
Media Broker

1207 Woodhollow Drive, Suite 3101
Houston, Texas 77057-1684

Phone: 713.789.4222
Facsimile: 713.789.4322

PERSONAL AND CONFIDENTIAL

June 9, 1998

Mr. Don Werlinger, President
Chameleon Radio Corporation
10865 Rockley Road
Houston, TX 77099

Dear Mr. Werlinger:

At your request, I have determined an appraised value, as of May 1, 1998, for KFCC-AM radio station licensed to Bay City, Texas.

Factors considered in reaching my decision were:

- 1) The facility itself operating as required under a license granted by the Federal Communications Commission - a Regional Class III AM radio station broadcasting on a frequency of 1270 kHz with a power of 1 kW both day and night. KFCC-AM has a three tower antenna system - during the day one tower produces a non-directional signal and at night all three towers are utilized to directionalize the signal. The studio and transmitter sites are leased. The studio and transmitting equipment is in good condition.
- 2) Review of KFCC-AM's present signal coverage maps depicting the expected reception areas in the absence of obstructions or interference.
- 3) KFCC-AM revenue summaries - historical, present and projected.
- 4) An overview of Bay City and other Texas small market radio conditions from an historical, present and projected perspective to include estimated gross revenues, other financial particulars and demographic and economic summaries.